

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

TIMOTHY EDWARD SPENCER,

Plaintiff,

vs.

DR. VIRGINIA HILL, DR. STEVEN
PALMERI, NURSE LORI
SWANSON, NURSE JACK
PRESTON, RICHARD OPPER, JOHN
GLUCKERT and DR. PERINEAN,

Defendants.

CV 18-00028-H-BMM-JTJ

ORDER

Plaintiff Timothy Spencer, a state prisoner proceeding in forma pauperis and without counsel, has filed a Declaration for Entry of Default. (Doc. 20.) He contends Defendants failed to timely answer or otherwise defend against his claims. (Doc. 20.) Rule 55(a) of the Federal Rules of Civil Procedure provides, “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party’s default.”

Pursuant to the federal statutes governing proceedings in forma pauperis and cases filed by prisoners, federal courts must engage in a preliminary screening of a

case to assess the merits of the claims. 28 U.S.C. § 1915(e)(2); 28 U.S.C. § 1915A(a). The Court conducted this screening on October 22, 2018. (Doc. 10.) Because Mr. Spencer is proceeding in forma pauperis, “[t]he officers of the court shall issue and serve all process.” 28 U.S.C. § 1915(d). The Court requested Defendants to waive service of summons which they did on November 21, 2018. (Doc. 14.) Defendants timely filed an Answer to Mr. Spencer’s Complaint on December 20, 2018. (Doc. 17). As such, there is no basis for entry of default.

ACCORDINGLY, IT IS HEREBY ORDERED THAT Mr. Spencer’s Declaration for Entry of Default (Doc. 20) is DENIED.

DATED this 7th day of January, 2019.

/s/ John Johnston

John Johnston

United States Magistrate Judge